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JUDGE: M. A. Mahoney

PARTIES: Jeremiah Lawson Helton, Tyco Capital f/k/a The CIT Group Equipment Financing, Inc., successor in interest to Newcourt Financial

CHAPTER: 13

ATTORNEYS: L. C. Williams, S. W. Ford

DATE: 10/22/01

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

JEREMIAH LAWSON HELTON,

Case No. 99-12325

Debtor.

**ORDER DENYING IN PART AND GRANTING IN PART DEBTOR'S MOTION
TO REQUIRE CREDITOR TO TURNOVER FUNDS TO THE TRUSTEE**

Lionel C. Williams, Mobile, Alabama, Attorney for Debtor
Scott W. Ford, Birmingham, Alabama, Attorney for Tyco Capital

This matter is before the Court on the motion of debtor to require Tyco Capital f/k/a The CIT Group/Equipment Financing, Inc., successor in interest to Newcourt Financial ("Tyco"), to turnover insurance proceeds to the trustee for disbursement. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is granting in part and denying in part debtor's motion to require creditor to turnover funds to the trustee.

FACTS

Jeremiah Lawson Helton filed for protection pursuant to chapter 13 of the Bankruptcy Code on July 6, 1999. Tyco held a security interest in Mr. Helton's 1998 Timberjack skidder. Mr. Helton's confirmed plan provided that the value of Tyco's collateral was \$20,000 and Tyco's total secured claim, including interest, was in the amount of \$20,000. Mr. Helton's confirmed plan pays 0% on unsecured claims. Mr. Helton maintained an insurance policy on Tyco's collateral which named Newcourt Financial as the loss payee. Tyco is the successor in interest to Newcourt Financial. The policy states that "Payment will be made to 'you' unless

another loss payee is named in the policy.” The policy defines “you” as “the persons or organizations named as the insured on the ‘schedule of coverages.’” Mr. Helton is the person named as the insured. On May 25, 2001, the collateral, financed by Tyco, was destroyed in a fire. Debtor received a check from the insurance company in the amount of \$22,890. The check was made out to “Lawson Helton & NewCart (sic) Financial.” According to the records of the chapter 13 trustee, the balance owing on Tyco’s secured claim is \$14,811.29 as of August 28, 2001.

LAW

The threshold issue is whether the insurance proceeds or a portion of them are property of debtor’s estate. The property of a chapter 13 estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). The estate also includes “[p]roceeds . . . from property of the estate.” § 541(6). However, courts have held that the fact that a debtor is the owner of an insurance policy does not necessarily mean the insurance proceeds are property of the estate. *In re Stevens*, 130 F.3d 1027, 1029 (11th Cir. 1997); *In re Suter*, 181 B.R. 116, 119 (Bankr. N.D. Ala. 1994). Where a single person or company is named as the beneficiary of an insurance policy the named payee is the owner of the policy proceeds. *Suter*, 181 B.R. at 119. The loss payable clause in the insurance policy gives the named payee “the superior right to recover, to the extent of his or her interest shown to the court, and the assured can only recover any balance in excess.” *Home Insurance Co. of New York v. Tumlin*, 241 Ala. 356, 2 So.2d 435 (1941). In this case Tyco is the named payee. The proceeds are not property of the bankruptcy estate and are payable to Tyco, at least to the extent of Tyco’s interest in the property. *See Suter*, 181 B.R. at 119. Since Mr. Helton is the owner of

the policy, he is entitled to recover the proceeds of the policy, if any, which exceed Tyco's interest in the property. *Id.*

The remaining issue is whether Tyco's interest is the amount payable under Mr. Helton's confirmed plan or the amount owed under the initial contract between Mr. Helton and Tyco. Property insurance is a substitute for the collateral insured. *Stevens* 130 F.3d at 1030; *Suter* 181 B.R. at 120. It is not a substitute for the debt. Mr. Helton's confirmed chapter 13 plan binds all creditors. 11 U.S.C. § 1327. Under § 506(d) a lien is void to the extent that it secures a claim that is not an allowed secured claim. Thus, Tyco's lien is voided to the extent it exceeds the \$20,000 allowed secured claim provided for in Mr. Helton's confirmed plan. Under Alabama law, a contract for property insurance is unenforceable except for the benefit of persons who have an "insurable interest" in the property at the time of the loss. ALA. CODE § 27-14-4(a) (1975). The Alabama Code defines "insurable interest" as an "actual, lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction or pecuniary damage or impairment." ALA. CODE § 27-14-4(b) (1975). At the time of the loss Tyco was only entitled to receive the remainder of its secured claim. That was the extent of its interest in the property. Tyco would not even have an insurable interest above \$14,811.29. Tyco "cannot claim a greater interest in the insurance proceeds than it had in the collateral when its interest is as a lienholder." *In re Witherspoon*, Case No. 97-12178, Order granting in part Debtor's motion for turnover of funds (Bankr. S.D. Ala. January 9, 2001). Thus, Mr. Helton is entitled to recover the amount of the proceeds that exceed the amount owed to Tyco for its secured claim under Mr. Helton's confirmed plan.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. Tyco Capital shall turnover to the chapter 13 trustee the funds remaining from the \$22,890 insurance proceeds check after deducting the amount still owed to Tyco for its secured claim under the confirmed plan of Mr. Jeremiah Lawson Helton as of the date of turnover.

2. The trustee shall apply the remainder of the funds to other debts as provided by the plan.

Dated: October 22, 2001

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE